



## OFFER AND AWARD

ARIZONA DEPARTMENT OF EDUCATION  
Procurement Section  
1535 West Jefferson Street, Bin #37  
Phoenix, Arizona 85007

SOLICITATION NO. RFP NO. ED09-0009

### OFFER

The Undersigned hereby offers and agrees to furnish the materials, service(s) or construction in compliance with all the terms, conditions, specifications and amendments in the solicitation.

The Undersigned additionally certifies that in accordance with A.R.S. § 37-397, the offeror does not have scrutinized business operations in either Iran or the Sudan.

Company Name

CTB/McGraw-Hill LLC

Street Address

20 Ryan Ranch Road

Monterey, CA

93940

City

State

Zip Code

Telephone Number:

831/393-7849

Name of Person Authorized to Sign Offer

Sandor Nagy, Chief Operating Officer

Title of Authorized Person

8/20/08

Signature of Authorized Person

Date of Offer

Facsimile Number:

831/393-7243

Offeror's Arizona Transaction (Sales) Privilege Tax License Number:

20002722

Offeror's Federal Employer Identification Number:

52-2358325

Acknowledgement of Amendment(s):

*(Offeror acknowledges receipt of amendment(s) to the Solicitation for Offers and related documents numbered and dated*

Amendment No. Date

1 8/1/08

2 8/8/08

3 8/15/08

Amendment No. Date

4 8/20/08

## ACCEPTANCE OF OFFER AND CONTRACT AWARD

*(For State of Arizona Use Only)*

Your Offer, dated 8/20/08, is hereby accepted as described in the Notice of Award. You are now bound to perform based upon the solicitation and your Offer, as accepted by the State.

This Contract shall henceforth be referred to as Contract Number **ED09-0009**.

You are hereby cautioned not to commence any billable work or provide any material, service or construction under this contract until you receive an executed purchase order, contract release document, or written notice to proceed, if applicable.

State of Arizona

Awarded this 11th day of September 2008

Douglas C. Peebles  
Douglas C. Peebles, MBA, CPPB, CPCM  
Chief Procurement Officer

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Contract Management Unit  
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*(CTB McGraw-Hill's proposal received at ADE on August 27, 2008 in response to RFP ED09-0009 is incorporated herein by reference.)*



# SECTION 1 SCOPE OF WORK

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## 1. Purpose of RFP

Under the direction of the State Board of Education (SBE) and in response to federal and state legislation, the Arizona Department of Education (ADE) is requesting assistance in the development, printing, and scoring of AIMS Mathematics Field Test that will be a stand-alone census field test to be administered in April 2009. Items from the field test will be used as part of the Criterion Referenced Tests (CRTs) called Arizona's Instrument to Measure Standards for Grades 3 through 8 (AIMS 3-8) and High School (AIMS HS).

## 2. Background and Testing History

- Arizona's Academic Standards ([www.azed.gov/standards/contentstandards.asp](http://www.azed.gov/standards/contentstandards.asp)) serve as the foundation for student achievement and accountability in Arizona. The State's CRTs are aligned to these standards. The standards provide teachers, administrators, students, parents, business, and community members with clear, concise statements about what students should know and be able to do.
- There is an established revision cycle for the Academic Standards ([www.ade.az.gov/standards/ContentAreaRevisionsAug07.pdf](http://www.ade.az.gov/standards/ContentAreaRevisionsAug07.pdf)). A revised Mathematics Standard was adopted by the SBE June 24, 2008.
- ARS § 15-741(A)(2) ([www.azleg.gov/ArizonaRevisedStatutes.asp?Title=15](http://www.azleg.gov/ArizonaRevisedStatutes.asp?Title=15).) mandates that the SBE shall "Adopt and implement an Arizona instrument to measure standards test to measure pupil achievement of the state board adopted academic standards in reading, writing and mathematics in at least four grades designated by the board." ARS § 15-701.01(A)(3) mandates that the SBE shall "Develop and adopt competency tests pursuant to section 15-741 for the graduation of pupils from high school in at least the areas of reading, writing and mathematics and shall establish passing scores for each such test." In academic year 2004-2005, AIMS was extended to include all Grades 3 through 8 in accordance with the requirements of *No Child Left Behind* (NCLB).

## 3. Project Planning and Communication

- 3.1. The highest technical quality shall be maintained in the production and administration of tests and in the reporting of results. All the work shall be conducted in accordance with the most recently published version of the *Standards for Educational and Psychological Testing* (AERA, APA, and NCME), recent court decisions, and USDOE Guidance for NCLB compliance. Upon the State's review of the forthcoming document on best practices for test publishers, the Offeror shall comply in accordance with the publication. This shall be reflected in all aspects of the assessment program and in the assignment of personnel to the project.
- 3.2. The Offeror shall develop management and quality control procedures for all contract deliverables.
- 3.3. The Offeror will provide to the State a detailed plan outlining the implementation and continued support of the assessment program by Program Management. The project requires an effective management system that enables the Offeror to complete tasks on schedule and within budget.
  - 3.3.1. The Offeror shall develop a plan for communication procedures and protocols between Offeror and the State.



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- 3.3.1.1.** Key meeting. The Offeror shall make arrangements for a post award conference among all contracting parties within ten days of the Contract award date.
- 3.3.1.2.** Task-specific meetings (as needed to develop and implement the program).
- Item Writing committee, October 6-10 and October 14-17, 2008.
  - Content and Bias Committee, November 2008.
  - Item Analysis Committee by August 1, 2009.
  - Others as needed
- 3.4.** The Offeror shall provide the résumé (See Appendix A for résumé format) for each person named as key personnel in the appendix of the proposal. Key Personnel shall include, at minimum, the following.
- 3.4.1.** The Program Manager must have appropriate program management credentials.
- 3.4.2.** Test Development Manager who has extensive experience in the development of customized CRTs, facilitating and training of educator committees, and extensive experience supervising mathematics content experts.
- 3.4.3.** Psychometrician who has an advanced degree in measurement and extensive experience in large scale customized assessments implementing IRT and the Rasch Model.
- 3.4.4.** Manufacturing Manager who has experience printing and producing a large scale customized assessment program.
- 3.4.5.** Logistics Manager who has extensive experience in the development and implementation of plans for the delivery and pick up of materials in a statewide assessment program.
- 3.4.6.** Technology Manager who has extensive experience in the development of technology requirements of large scale assessment programs and in secure exchange of confidential data files between Offeror and the State.
- 3.4.7.** Scoring Manager who is housed at the primary scoring/scanning site and has extensive experience in scoring a large scale state assessment program.
- 3.5.** The Offeror shall identify all proposed subcontractors, their assigned tasks and duties, and their qualifications for the tasks and duties assigned. Letters of agreement between Offeror and subcontractors must be submitted.
- 3.6.** The Offeror shall describe their hardware and software capacities to support the contract.
- 3.7.** All data produced from the assessments belong to the State and must be provided to the State upon request.
- 3.8.** All electronic transmission of documents and files that include information related to test items, test results, or individual students must pass through a secure portal following standard encryption procedures as agreed upon between the State and Offeror.



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#### **4. Requirements for Item Development and Field Test Form Development**

Machine-scorable items may include stand-alone multiple choice and interpretive multiple choice item types. For the purpose of this Contract, the term “stand-alone multiple choice” refers to items that have a single stem and a single set of response options. The term “interpretive multiple choice” refers to one or more items for which associated materials must be interpreted by the student to answer the item(s) correctly.

- 4.1. All criterion-referenced (CR) items are written by Arizona educators and owned by the State.
- 4.2. ADE is responsible for all facility and teacher cost associated with the teacher committees including meals, lodging, travel reimbursement, and daily stipend or substitute cost. ADE will have space arranged for the meetings. These meetings will be held the weeks of October 6 thru 11 and October 14 thru 18.
- 4.3. All items and field test forms must be secured. The Offeror must consult with the State in determining the best method for securing items and test forms during development and administration.
- 4.4. The Offeror shall develop an average of 160 items per grade level in Grades 3 through 8 and 280 items in high school that align to the Arizona Mathematics Academic Standard adopted June 24, 2008.
  - 4.4.1. The Offeror shall facilitate the Arizona teacher committees for writing items. These item writing committees will be held in Phoenix during October 2008.
  - 4.4.2. The Offeror shall provide editing and graphics as needed to get items print ready.
  - 4.4.3. The Offeror shall facilitate the Arizona teacher committee content and bias review of items prior to field testing. This committee will be held in Phoenix.
  - 4.4.4. Selection of items to be field tested will be based on teacher input, the operational test blueprint, and gap analysis of the current item bank.
- 4.5. The Offeror shall field test existing items in the current operational Item Bank that the State has aligned to different grade levels. The number of items at each grade level will vary and will be supplemented with new items (see 4.4.).
- 4.6. The Offeror, in collaboration with the State, shall develop 12 unique field test forms per grade level with 18 items per form for Grades 3 through 8.
  - 4.6.1. The forms will be spiraled with approximately 6,000 students per form.
  - 4.6.2. The Offeror shall print approximately 85 large print version of one form for each grade level field test.
- 4.7. The Offeror, in collaboration with the State, shall develop 12 unique field test forms for high school with 25 items per form.
  - 4.7.1. The forms will be spiraled with approximately 6,000 students per form.



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- 4.7.2. The Offeror shall print approximately 85 large print version of one form.
- 4.8. The Offeror shall follow the Arizona adopted print/form format and establish a quality control plan for the development of field test forms and answer documents.
- 4.8.1. The Offeror shall meet the guidelines for “universal design” as defined in the Arizona Style Guide (see Exhibit 7.2 for the Arizona Style Guide) regarding test design (font, item design, passage format). The font used on the test will be non-proprietary font that is commonly available.
- 4.8.2. Grade 3 is a scannable test book and does not have a separate answer document.
- 4.8.3. Grades 6, 7, 8 and high school include a mathematics reference sheet.
- 4.8.4. Printing stages for field test and answer document forms will be as follows.
- Mock-up. This is a development stage and is a period of time for design/improvement of the product. The Offeror and the State collaborate on the development of the mock-up.
  - Second Pages. This is an electronic format. It will be in page layout form for review by both the Offeror and the State. The State must approve the second pages and all changes to the second pages.
  - Confirming Copies. This is the first version of the typeset copy. It may be delivered in an electronic format. All approved changes to the second pages are to be incorporated in the confirming copies. The State must approve the confirming copies and any changes to the confirming copies.
  - Printer’s Proof (bluelines). The State receives a paper copy of all bluelines. The State must approve the bluelines prior to printing.

### **5. Field Test Administration**

- 5.1. The Offeror shall develop communication procedures between Offeror and the State’s districts.
- 5.1.1. The Offeror shall communicate with districts through the designated district test coordinator. The State will provide to the Offeror a list of district test coordinators including relevant contact information.
- 5.1.2. The Offeror shall participate in the Pre-Test Workshop for AIMS administration in January 2009.
- 5.2. The Offeror shall provide customer service support to district test coordinators.
- 5.2.1. Trained customer service representatives will be available to answer calls and emails from Arizona district test coordinators Monday through Friday, excluding Arizona state holidays, from 7:00 AM to 5:00 PM Mountain Standard Time. (Arizona is in the Mountain Time Zone. Most of Arizona does not participate in Daylight Saving Time).
- 5.2.2. The Offeror shall produce pre-coded student identification labels for scorable documents. The State will provide the Offeror with a data file (see Exhibit 7.3 for sample file layout) of demographic information for students to be tested.



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- 5.3. The Offeror and the State will develop a process for ordering materials. Orders will be placed and packaged by schools but shipped to the district. There are approximately 2,000 schools and approximately 600 districts.
- 5.4. The Offeror shall develop a test materials packaging plan. Test materials (field test books, answer documents, ancillary materials, and pre-coded student identification labels) are to be packaged in a manner that allows for easy counting and minimizes over-shipping due to order round-up necessary to accommodate package size.
- 5.5. The Offeror shall develop a plan and schedule for Materials Retrieval. All scorable and non-scorable materials shall be picked up within one week of the final day of the testing window from districts and shipped to the scoring center for scanning.
- 5.6. The Offeror shall develop and produce a print version and web-ready version of Test Administration Directions (TAD) and Test Coordinator Manual (TCM).
  - 5.6.1. TADs are to be produced at the ratio of one printed version per 20 student test books. Print copies will be distributed with the test materials.
  - 5.6.2. TCM are to be produced at the ratio of one printed version per district and one per school site. Print copies will be distributed with the test materials.
  - 5.6.3. Printing stages for ancillary materials.
    - Mock-up. This is a development stage and is performed over a period for design/improvement of product. The Offeror and the State collaborate on the development of the mock-up.
    - Second Pages. This is an electronic format. It will be in page layout form for review by both the Offeror and the State. The State must approve the second pages and all changes to the second pages.
    - Confirming Copies. This is the first version of the typeset copy. It may be delivered in an electronic format. All approved changes to the second pages are to be incorporated in the confirming copies. The State must approve the confirming copies and any changes to the confirming copies.
    - Printer's Proof (bluelines). The State receives a paper copy of all bluelines. The State must approve the bluelines prior to printing.

### 6. Scanning and Scoring

- 6.1. Develop with the State scanning and scoring schedules to meet reporting requirements including a plan for confirming all expected schools have submitted documents for scanning and scoring.
- 6.2. The Offeror shall collect data on the field test items and provide such data in an agreed upon format to the State.
  - 6.2.1. The Offeror shall be responsible for item analyses at the conclusion of the field test for each grade level and for each content area. The Offeror shall provide item response theory (IRT-



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based) and classical test theory (CTT-based) statistics for all field test items. The Offeror shall provide at least the following for every item.

- p-values
- Rasch values
- point biserials
- fit statistics
- Mantel-Haenszel statistics
- differential item functioning (DIF) statistics
- distracter analysis

**6.2.2.** Item associations must be identified.

- Items must have an assigned AZID number as a primary key.
- Items must be associated with content area, strand, concept, and performance objective.
- Item must be associated with a form.
- Item must have season and year of administration.
- Associated material for “interpretive multiple choice” items must be displayed with all associated items.

**6.3.** The Offeror shall deliver the print ready images of all items in PDF format and item data as identified in 6.2. to the State by July 15, 2009.

**6.4.** The Offeror shall conduct an Arizona educator item analysis committee by August 1, 2009 to review data identified in 6.2. to determine usability of field test items on operational **tests**.

**7. Psychometrics and Research Support**

The Offeror shall provide appropriate psychometrics and research to ensure validity and reliability in test construction and scoring.

**7.1.** Reliability and Validity. The Offeror shall be responsible for establishing and documenting evidence of the reliability and validity of field test results.

**7.2.** Statistical Analysis. The Offeror shall be responsible for item-analyses throughout the course of this project. The Offeror shall provide replication specifications for conducting the analyses to produce item-level statistics for all field tested items. The Offeror shall provide to the State all data to allow for the State’s replication of any and all analysis.

**7.3.** Technical Report. The Offeror shall provide a technical report that supports the validity and reliability of AIMS Mathematics Field Test. The technical report shall be in a form and format approved by the State and suitable for posting on the ADE website and will include detailed technical documentation of the programmatic, statistical, and psychometric procedures used to create and analyze AIMS Mathematics Field Test. The report will contain documentation of the technical merits of the field tests including reliability measures and evidence of validity. The technical report must supply support to meet NCLB technical quality requirements. The State and the TAC will review the technical report draft and offer edits prior to publication. This draft is due to the State no later than September 15, 2009.



## SECTION 2 SPECIAL TERMS AND CONDITIONS

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1. **Definition of Terms Used in these Special Terms and Conditions.** As used in these Special Terms and Conditions, the following terms, in addition to those terms defined in Section 3, Paragraph 1, have the following meaning:
  - A. *"ADE"* means the Arizona Department of Education.
  - B. *"Department"* means the Arizona Department of Education.
  - C. *"Services"* means services performed, workmanship and material furnished or used in the performance of services.
2. **Changes.**
  - A. The Procurement Officer may at any time, by written order, and without notice to the sureties, if any, make mutually acceptable changes within the general scope of this Contract in any one or more of the following:
    - (1) Description of services to be performed;
    - (2) Time of performance (i.e., hours of the day, days of the week, etc.); and
    - (3) Place of performance of the services.
  - B. If any such change causes an increase or decrease in the cost of, or the time required for, performance of any part of the work under this Contract, whether or not changed by the order, the Procurement Officer shall make an equitable adjustment in the Contract price, the delivery schedule, or both, and shall modify the contract.
  - C. The Contractor must assert its right to an adjustment under this provision within 30 days from the date of receipt of the written order. However, if the Procurement Officer decides that the facts justify it, the Procurement Officer may receive and act upon a proposal submitted before final payment of the Contract.
  - D. If the Contractor's proposal includes the cost of property made obsolete or excess by the change, the Procurement Officer shall have the right to prescribe the manner of the disposition of the property.
  - E. Failure to agree to any adjustment shall be a dispute under the Contract Claims provision of this Contract. However, nothing in this provision shall excuse the Contractor from proceeding with the Contract as changed.
3. **Indemnification.**

Contractor shall indemnify, defend, save and hold harmless the State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees (hereinafter referred to as "Indemnatee") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including court costs, attorneys' fees, and costs of claim processing, investigation and litigation) (hereinafter referred to as "Claims") for bodily injury or personal injury (including death), or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Contractor or any of its owners, officers, directors, agents, employees or subcontractors. This indemnity includes any claim or amount arising out of or recovered under the Workers' Compensation Law or arising out of the failure of such contractor to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree. It is the specific intention of the parties that the Indemnatee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnatee, be indemnified by Contractor from and against any and all claims. It is agreed that Contractor will be responsible for primary loss investigation, defense and judgment costs where this indemnification



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is applicable. In consideration of the award of this contract, the Contractor agrees to waive all rights of subrogation against the State of Arizona, its officers, officials, agents and employees for losses arising from the work performed by the Contractor for the State of Arizona.

*This indemnity shall not apply if the contractor or sub-contractor(s) is/are an agency, board, commission or university of the State of Arizona.*

#### 4. Insurance.

Contractor and subcontractors shall procure and maintain until all of their obligations have been discharged, including any warranty periods under this Contract, are satisfied, insurance against claims for injury to persons or damage to property which may arise from or in connection with the performance of the work hereunder by the Contractor, his agents, representatives, employees or subcontractors.

The *insurance requirements* herein are minimum requirements for this Contract and in no way limit the indemnity covenants contained in this Contract. The State of Arizona in no way warrants that the minimum limits contained herein are sufficient to protect the Contractor from liabilities that might arise out of the performance of the work under this contract by the Contractor, its agents, representatives, employees or subcontractors, and Contractor is free to purchase additional insurance.

A. **MINIMUM SCOPE AND LIMITS OF INSURANCE:** Contractor shall provide coverage with limits of liability not less than those stated below.

##### 1. Commercial General Liability – Occurrence Form

Policy shall include bodily injury, property damage, personal injury and broad form contractual liability.

• General Aggregate	\$2,000,000
• Products – Completed Operations Aggregate	\$1,000,000
• Personal and Advertising Injury	\$1,000,000
• Blanket Contractual Liability – Written and Oral	\$1,000,000
• Fire Legal Liability	\$ 50,000
• Each Occurrence	\$1,000,000

a. The policy shall be endorsed to include the following additional insured language: *“The State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees shall be named as additional insureds with respect to liability arising out of the activities performed by or on behalf of the Contractor”.*

b. Policy shall contain a waiver of subrogation against the State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.

##### 2. Worker's Compensation and Employers' Liability

Workers' Compensation	Statutory
Employers' Liability	
Each Accident	\$ 500,000
Disease – Each Employee	\$ 500,000
Disease – Policy Limit	\$1,000,000



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- a. Policy shall contain a waiver of subrogation against the State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees for losses arising from work performed by or on behalf of the Contractor.
  - b. This requirement shall not apply to: Separately, EACH contractor or subcontractor exempt under A.R.S. § 23-901, AND when such contractor or subcontractor executes the appropriate waiver (Sole Proprietor/Independent Contractor) form.
- B. **ADDITIONAL INSURANCE REQUIREMENTS:** The policies shall include, or be endorsed to include, the following provisions:
  1. The State of Arizona, its departments, agencies, boards, commissions, universities and its officers, officials, agents, and employees wherever additional insured status is required such additional insured shall be covered to the full limits of liability purchased by the Contractor, even if those limits of liability are in excess of those required by this Contract.
  2. The Contractor's insurance coverage shall be primary insurance with respect to all other available sources.
  3. Coverage provided by the Contractor shall not be limited to the liability assumed under the indemnification provisions of this Contract.
- C. **NOTICE OF CANCELLATION:** Each insurance policy required by the insurance provisions of this Contract shall provide the required coverage and shall not be suspended, voided, canceled, or reduced in coverage or in limits except after thirty (30) days prior written notice has been given to the State of Arizona. Such notice shall be sent directly to the person named in paragraph XX of this section and shall be sent by certified mail, return receipt requested.
- D. **ACCEPTABILITY OF INSURERS:** Insurance is to be placed with duly licensed or approved non-admitted insurers in the state of Arizona with an "A.M. Best" rating of not less than A- VII. The State of Arizona in no way warrants that the above-required minimum insurer rating is sufficient to protect the Contractor from potential insurer insolvency.
- E. **VERIFICATION OF COVERAGE:** Contractor shall furnish the State of Arizona with certificates of insurance (ACORD form or equivalent approved by the State of Arizona) as required by this Contract. The certificates for each insurance policy are to be signed by a person authorized by that insurer to bind coverage on its behalf.

All certificates and endorsements are to be received and approved by the State of Arizona before work commences. Each insurance policy required by this Contract must be in effect at or prior to commencement of work under this Contract and remain in effect for the duration of the project. Failure to maintain the insurance policies as required by this Contract, or to provide evidence of renewal, is a material breach of contract.

All certificates required by this Contract shall be sent directly to the person named in paragraph XX of this section. The State of Arizona project/contract number and project description shall be noted on the certificate of insurance. The State of Arizona reserves the right to require complete, certified copies of all insurance policies required by this Contract at any time. **DO NOT SEND CERTIFICATES OF INSURANCE TO THE STATE OF ARIZONA'S RISK MANAGEMENT SECTION.**



## SECTION 2

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- F. **SUBCONTRACTORS:** Contractors' certificate(s) shall include all subcontractors as insureds under its policies or Contractor shall furnish to the State of Arizona separate certificates and endorsements for each subcontractor. All coverages for subcontractors shall be subject to the minimum requirements identified above.
- G. **APPROVAL:** Any modification or variation from the *insurance requirements* in this Contract shall be made by the Department of Administration, Risk Management Section, whose decision shall be final. Such action will not require a formal Contract amendment, but may be made by administrative action.
- H. **EXCEPTIONS:** In the event the Contractor or sub-contractor(s) is/are a public entity, then the Insurance Requirements shall not apply. Such public entity shall provide a Certificate of Self-Insurance. If the contractor or sub-contractor(s) is/are a State of Arizona agency, board, commission, or university, none of the above shall apply.
5. **Contract Term.** The term of this Contract shall commence on the date the Procurement Officer signs the Offer and Acceptance Form, signifying ADE's acceptance of the Offeror's proposal and will remain in effect for one year, unless terminated or canceled.
6. **Pricing.** All pricing shall be firm, fixed and be inclusive of all labor, equipment, materials, products, freight (FOB Destination), consumable supplies, insurance, and all other costs incidental to the services provided.
7. **Removal of Contractor Personnel.** The Contractor agrees to utilize only experienced, responsible and capable employees in the performance of the work. ADE may require that the Contractor remove from the job, by this Contract, employees who endanger person or property or whose continued employment under this Contract is, in the opinion of ADE, not justified due to unacceptable performance of duties, or is inconsistent with the interests of ADE.
8. **Employment of State Personnel.** The Contractor shall not employ any person or persons in the employ of the State of Arizona for any work required by the terms of this Contract, without prior written approval of the Procurement Officer.
9. **Warranty of Services.**
- A. The Contractor warrants that all services provided hereunder will conform to the requirements of the Contract, including all descriptions, specifications and attachments made a part of this Contract. ADE's acceptance of services or goods provided by the Contractor shall not relieve the Contractor from its obligations under this warranty.
- B. In addition to its other remedies, ADE may, at the Contractor's expense, require prompt correction of any services failing to meet the Contractor's warranty herein. Services corrected by the Contractor shall be subject to all the provisions of this Contract in the manner and to the same extent as services originally furnished hereunder.
10. **Inspection of Services – Fixed Price.**
- A. The Contractor shall provide and maintain an inspection system acceptable to ADE covering the services under this Contract. Complete records of all inspection work performed by the Contractor shall be maintained and made available to ADE during contract performance and for as long afterwards as the Contract requires.
- B. ADE has the right to inspect and test all services called for by the Contract, to the extent practicable at all times and places during the term of the Contract. ADE shall perform inspections and tests in a manner that will not unduly delay the work.



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- C. If any of the services do not conform with Contract requirements, ADE may require the Contractor to perform the services again in conformity with Contract requirements, at an increase in Contract amount. When the defects in services cannot be corrected by re-performance, ADE may -
- (1) Require the Contractor to take necessary action to ensure that future performance conforms to Contract requirements; and
  - (2) Reduce the Contract price to reflect the reduced value of the services performed.
- D. If the Contractor fails to promptly perform the services again or to take the necessary action to ensure future performance in conformity with Contract requirements, ADE may -
- (1) By Contract or otherwise, perform the services and charge to the Contractor any cost incurred by ADE that is directly related to the performance of such service; or
  - (2) Terminate the Contract for default.

11. **Ownership.** All deliverables and/or other products of this Contract (including, but not limited to, all software documentation, reports, records, summaries and other matter and materials prepared or developed by the Contractor in performance of this Contract) shall be the sole, absolute and exclusive property of ADE, free from any claim or retention of rights thereto on the part of the Contractor, its agents, subcontractors, officers, or employees.
12. **Inclusive Offeror.** Offeror(s) are encouraged to make every effort to utilize subcontractors that are small, women-owned and/or minority owned business enterprises. Offerors who are committing a portion of their work to such subcontractors shall do so by identifying the type of service and work to be performed by providing detail concerning your organization's utilization of small, women-owned and/or minority business enterprises. Emphasis should be placed on specific areas that are subcontracted and percentage of contract utilization and how this effort will be administered and managed, including reporting requirements.
13. **Cooperation with Other Contractors and Subcontractors.** The Contractor shall fully cooperate with other ADE contractors, subcontractors and assigns and shall carefully plan and perform its own work to accommodate the work of other ADE contractors. The Contractor shall not intentionally commit or permit any act which will interfere with the performance of work by any other ADE contractors.
14. **Non-exclusive Status.** ADE reserves the right to have the same or similar services provided by other than the Contractor.
15. **Report Standards.** Reports or written materials prepared by the Contractor in response to the requirements of this Contract shall be thoroughly researched for accuracy of content, shall be grammatically correct and not contain spelling errors, shall be submitted in a format approved in advance by the Procurement Officer, and shall be submitted in draft form for advance review and comment by the Procurement Officer, if necessary or specified. The cost of correcting grammatical errors, correcting report data, or other revisions required to bring the report or written material into compliance with the Contract requirements shall be borne by the Contractor.
16. **Offshore Performance of Work Prohibited**  
Due to security and identity protection concerns, direct services under this contract shall be performed within the borders of the United States. Any services that are described in the specifications or scope of work that directly serve the State of Arizona or its clients and may involve access to secure or sensitive data or personal client data or development or modification of software for the State shall be performed within the borders of the United States. Unless specifically stated otherwise in the specifications, this definition does not apply to indirect or "overhead" services, redundant back-up services or services that are incidental to the performance of the contract. This provision



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applies to work performed by subcontractors at all tiers. Offerors shall declare all anticipated offshore services in the proposal.

**17. Federal Immigration and Nationality Act:**

The contractor shall comply with all federal, state and local immigration laws and regulations relating to the immigration status of their employees during the term of the contract. Further, the contractor shall flow down this requirement to all subcontractors utilized during the term of the contract. The Contractor and its subcontractors shall also maintain Employment Eligibility Verification forms (I-9) as required by the U.S. Department of Labor's Immigration and Control Act for all employees performing work under the contract. I-9 forms are available for download at USCIS.GOV. The State shall retain the right to perform random audits of contractor and subcontractor records or to inspect papers of any employee thereof to ensure compliance. Should the State determine that the contractor and/or any subcontractors be found noncompliant, the State may pursue all remedies allowed by law, including, but not limited to; suspension of work, termination of the contract for default and suspension and/or debarment of the contractor. All costs necessary to verify compliance are the responsibility of the Contractor.

**18. Payments.**

A. The Contractor shall submit invoices in one (1) original and one (1) copy. Invoices shall include:

- (1) Name and address of the Contractor.
- (2) Invoice date.
- (3) Contract number or other authorization for supplies delivered or services performed (including order number and contract line item number).
- (4) Description, quantity, unit of measure, unit price, and extended price of supplies delivered or services performed.
- (5) Shipping and payment terms (e.g., shipment number and date of shipment, prompt payment discount terms).
- (6) Name and address of Contractor official to whom payment is to be sent (must be the same as that in the Contract or in a proper notice of assignment).
- (7) Name (where practicable), title, phone number, and mailing address of person to be notified in the event of a defective invoice.
- (8) Any other information or documentation required by the Contract (such as evidence of shipment).

B. Submittal of an invoice constitutes Contractor's certification that services have been delivered as specified on the invoice in accordance with the Contract.

C. Submit invoices to the following address:

Arizona Department of Education  
Accounting, Bin #1  
1535 West Jefferson Street  
Phoenix, Arizona 85007



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**19. Contract Administration**

<p><b>A. Mailing of Payments.</b> Address to which payment should be mailed, if different than that listed on the Offer and Award Form.</p> <p style="text-align: center;"><b>The McGraw-Hill Companies</b> <b>PO Box 894190</b> <b>Los Angeles, CA 90189-4190</b></p>	<p><b>B. Contractor representative to contact for contract administration purposes:</b></p> <p style="text-align: center;"><b>Leslie Dodge</b> <b>1333 Burr Ridge Parkway</b> <b>Burr Ridge, IL 60527</b> <b>Phone: (630) 789-4526</b> <b>FAX: (630) 789-4099</b> <b>E-mail: leslie_dodge@ctb.com</b></p>
<p><b>C. The ADE Project Manager to contact for technical matters concerning contract performance (NOTE: this person is <u>not</u> authorized to direct contractor performance or make changes in contract requirements.):</b></p> <p style="text-align: center;"><b>Irene Hunting</b> <b>1535 West Jefferson Street, #6</b> <b>Phoenix, AZ 85007</b> <b>Phone: (602) 542-5450</b> <b>FAX: (602) 542-5467</b> <b>E-mail: Irene.Hunting@azed.gov</b></p>	<p><b>D. All contract administration matters will be managed by the Procurement Officer named below. All correspondence concerning this contract shall be directed to this individual.:</b></p> <p style="text-align: center;"><b>Brian D. Ball</b> <b>1535 West Jefferson Street, #37</b> <b>Phoenix, AZ 85007</b> <b>Phone: (602) 364-2517</b> <b>FAX: (602) 364-0598</b> <b>E-mail: brian.ball@azed.gov</b></p>

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1. **Definition of Terms.** As used in this Solicitation and any resulting Contract, the terms listed below are defined as follows:
  - A. *"Attachment"* means any item the Solicitation requires the Offeror to submit as part of the Offer.
  - B. *"Contract"* means the combination of the Solicitation, including the Uniform and Special Instructions to Offerors, the Uniform and Special Terms and Conditions, and the Specifications and Statement of Scope of Work; the Offer and any Final Proposal Revisions; and any Solicitation Amendments or Contract Amendments.
  - C. *"Contract Amendment"* means a written document signed by the Procurement Officer that is issued for the purpose of making changes in the Contract.
  - D. *"Contractor"* means any person who has a Contract with the State.
  - E. *"Days"* means calendar days unless otherwise specified
  - F. *"Exhibit"* means any item labeled as an Exhibit in the Solicitation or placed in the Exhibits section of the Solicitation.
  - G. *"Gratuity"* means a payment, loan, subscription, advance, deposit of money, services, or anything of more than nominal value, present or promised, unless consideration of substantially equal or greater value is received.
  - H. *"Materials"* means all property, including equipment, supplies, printing, insurance and leases of property but does not include land, a permanent interest in land or real property or leasing space.
  - I. *"Procurement Officer"* means the person duly authorized by the State to enter into and administer Contracts and make written determinations with respect to the Contract or their designee.
  - J. *"Services"* means the furnishing of labor, time or effort by a contractor or subcontractor which does not involve the delivery of a specific end product other than required reports and performance, but does not include employment agreements or collective bargaining agreements.
  - K. *"Subcontract"* means any Contract, express or implied, between the Contractor and another party or between a subcontractor and another party delegating or assigning, in whole or in part, the making or furnishing of any material or any service required for the performance of the Contract.
  - L. *"State"* means the State of Arizona and Department or Agency of the State that executes the Contract.
  - M. *"State Fiscal Year"* means the period beginning with July 1 and ending June 30.
2. **Contract Interpretation.**
  - A. Arizona Law. The Arizona law applies to this Contract including, where applicable, the Uniform Commercial Code as adopted by the State of Arizona and the Arizona Procurement Code, Arizona Revised Statutes (A.R.S.) Title 41, Chapter 23, and its implementing rules, Arizona Administrative Code (A.A.C.) Title 2, Chapter 7.
  - B. Implied Contract Terms. Each provision of law and any terms required by law to be in this Contract are a part of this Contract as if fully stated in it.



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- C. Contract Order of Precedence. In the event of a conflict in the provisions of the Contract, as accepted by the State and as they may be amended, the following shall prevail in the order set forth below:
- (1) Special Terms and Conditions;
  - (2) Uniform Terms and Conditions;
  - (3) Statement or Scope of Work;
  - (4) Specifications;
  - (5) Attachments;
  - (6) Exhibits;
  - (7) Documents referenced or included in the Solicitation.
- D. Relationship of Parties. The Contractor under this Contract is an independent Contractor. Neither party to this Contract shall be deemed to be the employee or agent of the other party to the Contract.
- E. Severability. The provisions of this Contract are severable. Any term or condition deemed illegal or invalid shall not affect any other term or condition of the Contract.
- F. No Parol Evidence. This Contract is intended by the parties as a final and complete expression of their agreement. No course of prior dealings between the parties and no usage of the trade shall supplement or explain any terms used in this document and no other understanding either oral or in writing shall be binding.
- G. No Waiver. Either party's failure to insist on strict performance of any term or condition of the Contract shall not be deemed a waiver of that term or condition even if the party accepting or acquiescing in the nonconforming performance knows of the nature of the performance and fails to object to it.

### 3. **Contract Administration and Operation.**

- A. Records. Under A.R.S. § 35-214 and § 35-215, the Contractor shall retain and shall contractually require each subcontractor to retain all data and other "records" relating to the acquisition and performance of the Contract for a period of five years after the completion of the Contract. All records shall be subject to inspection and audit by the State at reasonable times. Upon request, the Contractor shall produce a legible copy of any or all such records.
- B. Non-Discrimination. The Contractor shall comply with State Executive Order No. 99-4 and all other applicable Federal and State laws, rules and regulations, including the Americans with Disabilities Act.
- C. Audit. Pursuant to A.R.S. § 35-214, at any time during the term of this Contract and five (5) years thereafter, the Contractor's or any subcontractor's books and records shall be subject to audit by the State and, where applicable, the Federal Government, to the extent that the books and records relate to the performance of the Contract or Subcontract.
- D. Facilities Inspection and Materials Testing. The Contractor agrees to permit access to its facilities, subcontractor facilities and the Contractor's processes or services, at reasonable times for inspection of the facilities or materials covered under this Contract. The State shall also have the right to test, at its own cost,



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the materials to be supplied under this Contract. Neither inspection of the Contractor's facilities nor materials testing shall constitute final acceptance of the materials or services. If the State determines non-compliance of the materials, the Contractor shall be responsible for the payment of all costs incurred by the State for testing and inspection.

- E. Notices. Notices to the Contractor required by this Contract shall be made by the State to the person indicated on the Offer and Acceptance form submitted by the Contractor unless otherwise stated in the Contract. Notices to the State required by the Contract shall be made by the Contractor to the Solicitation Contact Person indicated on the Solicitation cover sheet, unless otherwise stated in the Contract. An authorized Procurement Officer and an authorized Contractor representative may change their respective person to whom notice shall be given by written notice and an amendment to the Contract shall not be necessary.
- F. Advertising, Publishing and Promotion of Contract. The Contractor shall not use, advertise or promote information for commercial benefit concerning this Contract without the prior written approval of the Procurement Officer.
- G. Property of the State. Any materials, including reports, computer programs and other deliverables, created under this Contract are the sole property of the State. The Contractor is not entitled to a patent or copyright on those materials and may not transfer the patent or copyright to anyone else. The Contractor shall not use or release these materials without the prior written consent of the State.
- H. Ownership of Intellectual Property. Any and all intellectual property, including but not limited to copyright, invention, trademark trade name, service mark, and/or trade secrets created or conceived pursuant to or as a result of this Contract and any related subcontract ("Intellectual Property"), shall be work made for hire and the State shall be considered the creator of such Intellectual Property. The agency, department, division, board or commission of the State of Arizona requesting the issuance of this Contract shall own (for and on behalf of the State) the entire right, title and interest to the Intellectual Property throughout the world. Contractor shall notify the State, within thirty (30) days, of the creation of any Intellectual Property by it or its subcontractor(s). Contractor, on behalf of itself and any subcontractor(s), agrees to execute any and all document(s) necessary to assure ownership of the Intellectual Property vests in the State and shall take no affirmative actions that might have the effect of vesting all or part of the Intellectual Property in any entity other than the State. The Intellectual Property shall not be disclosed by Contractor or its subcontractor(s) to any entity not the State without the express written authorization of the agency, department, division, board or commission of the State of Arizona requesting the issuance of this Contract.

#### 4. **Costs and Payments.**

- A. Payments. Payments shall comply with the requirements of A.R.S. Titles 35 and 41, Net 30 days. Upon receipt and acceptance of goods or services, the Contractor shall submit a complete and accurate invoice for payment from the State within thirty (30) days.
- B. Delivery. Unless stated otherwise in the Contract, all prices shall be F.O.B. Destination and shall include all freight delivery and unloading at the destinations.
- C. Applicable Taxes.
  - (1) Payment of Taxes. The Contractor shall be responsible for paying all applicable taxes.
  - (2) State and Local Transaction Privilege Taxes. The State of Arizona is subject to all applicable state and local transaction privilege taxes. Transaction privilege taxes apply to the sale and are the



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responsibility of the seller to remit. Failure to collect taxes from the buyer does not relieve the seller from its obligation to remit taxes.

- (3) **Tax Indemnification.** Contractor and all subcontractors shall pay all Federal, state and local taxes applicable to its operation and any persons employed by the Contractor. Contractor shall, and require all subcontractors to hold the State harmless from any responsibility for taxes, damages and interest, if applicable, contributions required under Federal, and/or state and local laws and regulations and any other costs including transaction privilege taxes, unemployment compensation insurance, Social Security and Worker's Compensation.
- (4) **IRS W9 Form.** In order to receive payment, the Contractor shall have a current I.R.S. W9 Form on file with the State of Arizona, unless not required by law.
- (5) **Availability of Funds for the Next State Fiscal Year.** Funds may not presently be available for performance under this Contract beyond the current state fiscal year. No legal liability on the part of the State for any payment may arise under this Contract beyond the current state fiscal year until funds are made available for performance of this Contract.
- (6) **Availability of Funds for the Current State Fiscal Year.** Should the State Legislature enter back into session and reduce the appropriations or for any reason and these goods or services are not funded, the State may take any of the following actions:
  - a. Accept a decrease in price offered by the Contactor;
  - b. Cancel the Contract;
  - c. Cancel the Contract and re-solicit the requirements.

### 5. **Contract Changes.**

- A. **Amendments.** This Contract is issued under the authority of the Procurement Officer who signed this Contract. The Contract may be modified only through a Contract Amendment within the scope of the Contract. Changes to the Contract, including the addition of work or materials, the revision of payment terms, or the substitution of work or materials, directed by a person who is not specifically authorized by the Procurement Officer in writing or made unilaterally by the Contractor are violations of the Contract and of applicable law. Such changes, including unauthorized written Contract Amendments shall be void and without effect, and the Contractor shall not be entitled to any claim under this Contract based on those changes.
- B. **Subcontracts.** The Contractor shall not enter into any Subcontract under this Contract for the performance of this Contract without the advance written approval of the Procurement Officer. The Contractor shall clearly list any proposed subcontractors and the subcontractor's proposed responsibilities. The Subcontract shall incorporate by reference the terms and conditions of this Contract.



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- C. Assignment and Delegation. The Contractor shall not assign any right nor delegate any duty under this Contract without the prior written approval of the Procurement Officer. The State shall not unreasonably withhold approval.

### 6. Risk and Liability.

- A. Risk of Loss. The Contractor shall bear all loss of conforming material covered under this Contract until received by authorized personnel at the location designated in the purchase order or Contract. Mere receipt does not constitute final acceptance. The risk of loss for nonconforming materials shall remain with the Contractor regardless of receipt.

- B. General Indemnification. To the extent permitted by A.R.S. § 41-621 and § 35-154, the State of Arizona shall be indemnified and held harmless by the Contractor for its vicarious liability as a result of entering into this Contract. Each party to this Contract is responsible for its own negligence.

- C. Indemnification.

- (1) Contractor/Vendor Indemnification (Not Public Agency). The parties to this Contract agree that the State of Arizona, its departments, agencies, boards and commissions shall be indemnified and held harmless by the Contractor for the vicarious liability of the State as a result of entering into this Contract. However, the parties further agree that the State of Arizona, its departments, agencies, boards and commissions shall be responsible for its own negligence. Each party to this Contract is responsible for its own negligence.

- (2) Public Agency Language Only. Each party (as 'indemnitor') agrees to indemnify, defend, and hold harmless the other party (as 'indemnitee') from and against any and all claims, losses, liability, costs, or expenses (including reasonable attorney's fees) (hereinafter collectively referred to as 'claims') arising out of bodily injury of any person (including death) or property damage but only to the extent that such claims which result in vicarious/derivative liability to the indemnitee, are caused by the act, omission, negligence, misconduct, or other fault of the indemnitor, its officers, officials, agents, employees, or volunteers.

- (3) Indemnification – Patent and Copyright. The Contractor shall indemnify and hold harmless the State against any liability, including costs and expenses, for infringement of any patent, trademark or copyright arising out of Contract performance or use by the State of materials furnished or work performed under this Contract. The State shall reasonably notify the Contractor of any claim for which it may be liable under this paragraph. If the Contractor is insured pursuant to A.R.S. § 41-621 and § 35-154, this section shall not apply.

- D. Force Majeure.

- (1) Except for payment of sums due, neither party shall be liable to the other nor deemed in default under this Contract if and to the extent that such party's performance of this Contract is prevented by reason of force majeure. The term "*force majeure*" means an occurrence that is beyond the control of the party affected and occurs without its fault or negligence. Without limiting the foregoing, force majeure includes acts of God; acts of the public enemy; war; riots; strikes; mobilization; labor disputes; civil disorders; fire; flood; lockouts; injunctions-intervention-acts; or failures or refusals to act by government authority; and other similar occurrences beyond the control of the party declaring force majeure which such party is unable to prevent by exercising reasonable diligence.



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- (2) Force Majeure shall not include the following occurrences:
- a. Late delivery of equipment or materials caused by congestion at a manufacturer's plant or elsewhere, or an oversold condition of the market;
  - b. Late performance by a subcontractor unless the delay arises out of a force majeure occurrence in accordance with this force majeure term and condition; or
  - c. Inability of either the Contractor or any subcontractor to acquire or maintain any required insurance, bonds, licenses or permits.
- (3) If either party is delayed at any time in the progress of the work by force majeure, the delayed party shall notify the other party in writing of such delay, as soon as is practicable and no later than the following working day, of the commencement thereof and shall specify the causes of such delay in such notice. Such notice shall be delivered or mailed certified-return receipt and shall make a specific reference to this article, thereby invoking its provisions. The delayed party shall cause such delay to cease as soon as practicable and shall notify the other party in writing when it has done so. The time of completion shall be extended by Contract Amendment for a period of time equal to the time that results or effects of such delay prevent the delayed party from performing in accordance with this Contract.
- (4) Any delay or failure in performance by either party hereto shall not constitute default hereunder or give rise to any claim for damages or loss of anticipated profits if, and to the extent that such delay or failure is caused by force majeure.
- E. Third Party Antitrust Violations. The Contractor assigns to the State any claim for overcharges resulting from antitrust violations to the extent that those violations concern materials or services supplied by third parties to the Contractor, toward fulfillment of this Contract.

### 7. Warranties.

- A. Liens. The Contractor warrants that the materials supplied under this Contract are free of liens and shall remain free of liens.
- B. Quality. Unless otherwise modified elsewhere in these terms and conditions, the Contractor warrants that, for one year after acceptance by the State of the materials, they shall be:
- (1) Of a quality to pass without objection in the trade under the Contract description;
  - (2) Fit for the intended purposes for which the materials are used;
  - (3) Within the variations permitted by the Contract and are of even kind, quantity, and quality within each unit and among all units;
  - (4) Adequately contained, packaged and marked as the Contract may require; and
  - (5) Conform to the written promises or affirmations of fact made by the Contractor.



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- C. Fitness. The Contractor warrants that any material supplied to the State shall fully conform to all requirements of the Contract and all representations of the Contractor, and shall be fit for all purposes and uses required by the Contract.
- D. Inspection/Testing. The warranties set forth in subparagraphs 7A through 7C of this paragraph are not affected by inspection or testing of or payment for the materials by the State.
- E. Year 2000.
- (1) Notwithstanding any other warranty or disclaimer of warranty in this Contract, the Contractor warrants that all products delivered and all services rendered under this Contract shall comply in all respects to performance and delivery requirements of the specifications and shall not be adversely affected by any date-related data Year 2000 issues. This warranty shall survive the expiration or termination of this Contract. In addition, the defense of *force majeure* shall not apply to the Contractor's failure to perform specification requirements as a result of any date-related data Year 2000 issues.
- (2) Additionally, notwithstanding any other warranty or disclaimer of warranty in this Contract, the Contractor warrants that each hardware, software, and firmware product delivered under this Contract shall be able to accurately process date/time data (including but not limited to calculation, comparing, and sequencing) from, into, and between the twentieth and twenty-first centuries, and the years 1999 and 2000 and leap year calculations, to the extent that other information technology utilized by the State in combination with the information technology being acquired under this Contract properly exchanges date-time data with it. If this Contract requires that the information technology products being acquired perform as a system, or that the information technology products being acquired perform as a system in combination with other State information technology, then this warranty shall apply to the acquired products as a system. The remedies available to the State for breach of this warranty shall include, but shall not be limited to, repair and replacement of the information technology products delivered under this Contract. In addition, the defense of *force majeure* shall not apply to the failure of the Contractor to perform any specification requirements as a result of any date-related data Year 2000 issues.
- F. Compliance With Applicable Laws. The materials and services supplied under this Contract shall comply with all applicable Federal, state and local laws, and the Contractor shall maintain all applicable license and permit requirements.
- G. Survival of Rights and Obligations after Contract Expiration or Termination.
- (1) Contractor's Representations and Warranties. All representations and warranties made by the Contractor under this Contract shall survive the expiration or termination hereof. In addition, the parties hereto acknowledge that pursuant to A.R.S. § 12-510, except as provided in A.R.S. § 12-529, the State is not subject to or barred by any limitations of actions prescribed in A.R.S., Title 12, Chapter 5.
- (2) Purchase Orders. The Contractor shall, in accordance with all terms and conditions of the Contract, fully perform and shall be obligated to comply with all purchase orders received by the Contractor prior to the expiration or termination hereof, unless otherwise directed in writing by the Procurement Officer, including, without limitation, all purchase orders received prior to but not fully performed and satisfied at the expiration or termination of this Contract.



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### 8. State's Contractual Remedies.

- A. Right to Assurance. If the State in good faith has reason to believe that the Contractor does not intend to, or is unable to perform or continue performing under this Contract, the Procurement Officer may demand in writing that the Contractor give a written assurance of intent to perform. Failure by the Contractor to provide written assurance within the number of Days specified in the demand may, at the State's option, be the basis for terminating the Contract under the Uniform Terms and Conditions or other rights and remedies available by law or provided by the Contract.
- B. Stop Work Order.
- (1) The State may, at any time, by written order to the Contractor, require the Contractor to stop all or any part, of the work called for by this Contract for period(s) of days indicated by the State after the order is delivered to the Contractor. The order shall be specifically identified as a stop work order issued under this clause. Upon receipt of the order, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize the incurrence of costs allocable to the work covered by the order during the period of work stoppage.
  - (2) If a stop work order issued under this clause is canceled or the period of the order or any extension expires, the Contractor shall resume work. The Procurement Officer shall make an equitable adjustment in the delivery schedule or Contract price, or both, and the Contract shall be amended in writing accordingly.
- C. Non-exclusive Remedies. The rights and the remedies of the State under this Contract are not exclusive.
- D. Nonconforming Tender. Materials or services supplied under this Contract shall fully comply with the Contract. The delivery of materials or services a portion of the materials or services that do not fully comply constitutes a breach of contract. On delivery of nonconforming materials or services, the State may terminate the Contract for default under applicable termination clauses in the Contract, exercise any of its rights and remedies under the Uniform Commercial Code, or pursue any other right or remedy available to it.
- E. Right of Offset. The State shall be entitled to offset against any sums due the Contractor, any expenses or costs incurred by the State, or damages assessed by the State concerning the Contractor's non-conforming performance or failure to perform the Contract, including expenses, costs and damages described in the Uniform Terms and Conditions.

### 9. Contract Termination.

- A. Cancellation for Conflict of Interest. Pursuant to A.R.S. § 38-511, the State may cancel this Contract within three (3) years after Contract execution without penalty or further obligation if any person significantly involved in initiating, negotiating, securing, drafting or creating the Contract on behalf of the State is or becomes at any time while the Contract or an extension of the Contract is in effect an employee of or a consultant to any other party to this Contract with respect to the subject matter of the Contract. The cancellation shall be effective when the Contractor receives written notice of the cancellation unless the notice specifies a later time. If the Contractor is a political subdivision of the State, it may also cancel this Contract as provided in A.R.S. § 38-511.



## SECTION 3 UNIFORM TERMS AND CONDITIONS

ARIZONA DEPARTMENT OF EDUCATION  
Procurement Section  
1535 West Jefferson Street, Bin #37  
Phoenix, Arizona 85007

**CONTRACT NO. ED09-0009**

*Version 7*

- B. Gratuities. The State may, by written notice, terminate this Contract, in whole or in part, if the State determines that employment or a Gratuity was offered or made by the Contractor or a representative of the Contractor to any officer or employee of the State for the purpose of influencing the outcome of the procurement or securing the Contract, an amendment to the Contract, or favorable treatment concerning the Contract, including the making of any determination or decision about contract performance. The State, in addition to any other rights or remedies, shall be entitled to recover exemplary damages in the amount of three times the value of the Gratuity offered by the Contractor.
- C. Suspension or Debarment. The State may, by written notice to the Contractor, immediately terminate this Contract if the State determines that the Contractor has been debarred, suspended or otherwise lawfully prohibited from participating in any public procurement activity, including but not limited to, being disapproved as a subcontractor of any public procurement unit or other governmental body. Submittal of an offer or execution of a contract shall attest that the Contractor is not currently suspended or debarred. If the Contractor becomes suspended or debarred, the Contractor shall immediately notify the State.
- D. Termination for Convenience. The State reserves the right to terminate the Contract, in whole or in part at any time, when in the best interests of the State without penalty or recourse. Upon receipt of the written notice, the Contractor shall immediately stop all work, as directed in the notice, notify all subcontractors of the effective date of the termination and minimize all further costs to the State. In the event of termination under this paragraph, all documents, data and reports prepared by the Contractor under the Contract shall become the property of and be delivered to the State upon demand. The Contractor shall be entitled to receive just and equitable compensation for work in progress, work completed and materials accepted before the effective date of the termination. The cost principles and procedures provided in A.A.C. R2-7-701 shall apply.
- E. Termination for Default.
- (1) In addition to the rights reserved in the Contract, the State may terminate the Contract in whole or in part due to the failure of the Contractor to comply with any term or condition of the Contract, to acquire and maintain all required insurance policies, bonds, licenses and permits, or to make satisfactory progress in performing the Contract. The Procurement Officer shall provide written notice of the termination and the reasons for it to the Contractor.
  - (2) Upon termination under this paragraph, all goods, materials, documents, data and reports prepared by the Contractor under the Contract shall become the property of and be delivered to the State on demand.
  - (3) The State may, upon termination of this Contract, procure, on terms and in the manner that it deems appropriate, materials or services to replace those under this Contract. The Contractor shall be liable to the State for any excess costs incurred by the State in procuring materials or services in substitution for those due from the Contractor.
- F. Continuation of Performance Through Termination. The Contractor shall continue to perform, in accordance with the requirements of the Contract, up to the date of termination, as directed in the termination notice.



**SECTION 3**  
**UNIFORM TERMS AND CONDITIONS**

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10. **Contract Claims.** All contract claims or controversies under this Contract shall be resolved according to A.R.S. Title 41, Chapter 23, Article 9, and rules adopted thereunder.
11. **Arbitration.** The parties to this Contract agree to resolve all disputes arising out of or relating to this Contract through arbitration, after exhausting applicable administrative review, to the extent required by A.R.S. § 12-1518, except as may be required by other applicable statutes (Title 41).



**PRICES/DELIVERY SCHEDULE**

Contract No. ED09-0009

Develop, print, and score mathematics field test with items aligned to the Arizona Mathematics Standard Articulated by Grade Level specifically for high school and grades 3 through 8 mathematics, according to the scope of work, instructions, and terms and conditions in RFP ED09-0009.

**Alternate Proposal for Incorporated Field Testing Design**

We have provided the ADE with an option for inclusion of the mathematics field-test at the end of the Spring AIMS operational testing period. The option would require students to make their responses in a separate section of student operational AIMS answer document for Grades 4–8 and high school. This option is presented to the ADE because we feel it provides significant cost savings, because it will allow ADE to examine field-test data sooner, and because it will alleviate the burden on the school districts associated with arranging for a separate field test

administration. This option is described in greater detail in our Alternate Proposal starting on page 60.

The total cost for the program described in our Alternate Proposal is \$2,405,509.

**Sales Tax**

In accordance with the RFP in Amendment 3, it is the instruction of the State and the understanding of CTB that the Transaction Privilege Tax will not apply to the services the State requested. Therefore, CTB understands it should not list a line item for the Transaction Privilege Tax in its proposal. It is mutually recognized that the nature of the Contract is virtually all that of providing services. However, if the State later determines that the Transaction Privilege Tax does apply to any portion of the Contract between CTB and the State, then the parties will amend the Contract to include the a provision stating that the amount of such Tax will be payable to CTB, which will then render such amount to the State Tax Authority.

	Subtotal \$	<b><u>2,405,509.00</u></b>
_____ %* Arizona Sales Tax, State and City*	\$	N/A
	Total Offer \$	<b><u>2,405,509.00</u></b>

If payment is made within \_\_\_\_\_ calendar days after acceptance of goods and/or services, the above quoted price, excluding sales tax, shall be discounted by \_\_\_\_\_%. (Refer to Uniform Instructions To Offerors for discount requirements.)

**Notice: If the transaction privilege (sales) taxes are not described and itemized on the offer, the State will assume that the price(s) offered includes all applicable taxes.**